

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

RICHARD C FITZPATRICK,

Plaintiff,

v.

Case No: 5:19-cv-623-Oc-30PRL

**ROBERT WILKIE and DEPARTMENT
OF VETERANS AFFAIRS,**

Defendants.

REPORT AND RECOMMENDATION¹

This matter is before the Court on Plaintiff's motion to appeal *in forma pauperis*. (Doc. 13).

Section 1915 of Title 28 of the United States Code and Federal Rule of Appellate Procedure 24 govern the determination of applications to proceed *in forma pauperis*. *Busch v. County of Volusia*, 189 F.R.D. 687, 690 (M.D. Fla. 1999). An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. *Id.* at 691, *citing* 28 U.S.C. § 1915. A plaintiff demonstrates good faith when he or she seeks appellate review of any issue that is not frivolous. *Id.* at 692, *citing Coppedge v. United States*, 369 U.S. 438 (1962).

Here, the Court denied the plaintiff leave to proceed in the district court *in forma pauperis* because his amended complaint failed to state a claim and was frivolous. (Docs. 9, 11). In the

¹ Within 14 days after being served with a copy of the recommended disposition, a party may file written objections to the Report and Recommendation's factual findings and legal conclusions. *See* Fed. R. Civ. P. 72(b)(3); Fed. R. Crim. P. 59(b)(2); 28 U.S.C. § 636(b)(1)(B); Local Rule 6.02. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

instant motion, the plaintiff fails to identify any errors in that ruling, nor does he provide any additional information to suggest that his appeal raises any nonfrivolous claims.

Accordingly, it is respectfully **RECOMMENDED** that Plaintiff's motion to appeal *in forma pauperis* be **DENIED**. *See Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982) ("if the district court again finds [plaintiff's claims] frivolous (as normally it would since it denied pauper status in its court), it should then deny leave to appeal *in forma pauperis*").

DONE and **ENTERED** in Ocala, Florida on August 28, 2020.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties